

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE POLYURETHANE FOAM)	
ANTITRUST LITIGATION)	MDL Docket No. 2196
This document relates to:)	Index No. 10-MD-2196 (JZ)
ALL CASES))	
)	

ORDER AND STIPULATED DISCOVERY PLAN

Plaintiffs representing direct purchasers and indirect purchaser class plaintiffs ("Plaintiffs") and Defendants in the above-captioned litigation, and the United States, through the Department of Justice, Antitrust Division, (hereinafter collectively referred to as "Parties") have agreed to the terms of this Stipulation and Order Regarding Discovery; Accordingly, it is ORDERED:

(1) The Parties have agreed to staggered discovery. Unless stayed by order of the Court, document discovery may proceed after the filing of the Master Consolidated Complaints, subject to the conditions provided below. No interrogatories, requests for admissions, or individual depositions or depositions conducted pursuant to Federal Rule of Civil Procedure 30(b)(6), shall be propounded on the issue of liability prior to October 31, 2011. All such other discovery, including interrogatories and depositions on issues other than liability,

may proceed subject to the limits and conditions established by the Court, agreed to by the parties, or addressed by this Stipulation and the Federal Rules of Civil Procedure, including agreement or order on the discovery protocols referenced in paragraph 11 of the Court's Initial Case Management Conference Order dated January 20, 2011. If at any time prior to October 31, 2011, the Government believes that the initial document focused discovery phase should be extended beyond that date, the Government shall notify Plaintiffs and Defendants, and the Parties shall meet and confer in an effort to reach a mutually acceptable agreement about an extension of the limitations period;

(2) Plaintiffs and Defendants agree, consistent with restrictions below, that they will not attempt to track the government's investigation through any form of written discovery requests, requests for admissions, interrogatories, or through questions during depositions at any phase in the discovery process;

(3) Before Plaintiffs or Defendants serve any written discovery request(s) or subpoena(s), including requests for production of documents, subpoenas duces tecum, interrogatories, and requests for admissions, the issuing party will provide a copy of the proposed request(s) to the Antitrust Division at least fourteen business days before serving the request(s) on opposing parties;

(4) The Party propounding the discovery will meet and confer as necessary with the Government concerning the proposed discovery request(s) or subpoena to attempt to resolve any Government objection(s);

(5) In the event that such conference fails to resolve the objection(s) and parties serve a discovery request or subpoena to which the Government objects, the Party may serve the request and the Government may file a motion objecting to or seeking to stay the requested discovery, subpoena response or deposition

within fourteen (14) days of service of such request. The Parties agree that the proposed request or subpoena will be stayed automatically pending a ruling from the Court on the Motion by the Government.

(6) Plaintiffs and Defendants will serve on the Government by email a copy of all written discovery requests and subpoenas served on any individual or entity;

(7) In the event that the Government concludes that a motion objecting to or seeking to stay any requested discovery or subpoena response would disclose information that would materially affect the integrity of the Government's investigation, the Government will make a motion to proceed ex parte and/or under seal;

(8) Upon the expiration of the first phase of staggered discovery, the Plaintiffs and Defendants may seek requests for admissions, propose interrogatories, and proceed with depositions on the issue of liability consistent with the limits and conditions established by the Court, agreed to by the parties, or addressed by this Stipulation and Order, the Federal Rules of Civil Procedure, or other applicable rules;

(9) Before a Party requests admissions, proposes interrogatories, notices a deposition, or issues a subpoena for a deposition, that Party will provide a copy of the request for admission, interrogatory, notice or subpoena to the Antitrust Division at least fourteen business days before serving the notice of subpoena;

(10) The Party proposing the discovery will meet and confer as necessary concerning the proposed requests for admissions, interrogatories, or deposition(s) to attempt to resolve any Government objection(s) to the proposed deposition(s);

(11) In the event that such conference fails to resolve the objection(s) and Plaintiffs or Defendants proceed with the request for admissions, interrogatories, or notice a deposition or serve a subpoena for testimony to which the Government objects, the Government may file a motion objecting to or seeking to stay the requested deposition within fourteen days of service of such notice or subpoena. The Parties agree that the proposed deposition will be stayed automatically pending a ruling from the Court on the Motion by the Government.

(12) Parties will provide to the Government by email a copy of all requests for admissions, interrogatories, or deposition notices and subpoenas for testimony that are served in the course of discovery;

(13) In the event that the Government concludes that a motion objecting to or seeking to stay any requested deposition would disclose information that would materially affect the integrity of the Government's investigation, the Government will make a motion to proceed ex parte and/or under seal;

(14) Nothing herein is intended to limit the rights of the Parties to object to or request a stay of any discovery, and the Government reserves the right to waive any portion of its obligations or benefits in this Stipulation at its sole discretion;

(15) This Order governs discovery issues only as they relate to undersigned Plaintiffs, Defendants and the Government. Nothing in this Order may be read to suggest that the Plaintiffs or Defendants have consented to any discovery. Plaintiffs and Defendants retain all rights to object to discovery requests under the Federal Rules of Civil Procedure or other applicable rules.

Respectfully Submitted,

/s/ William A. Isaacson

William A. Isaacson
BOIES, SCHILLER & FLEXNER LLP
5301 Wisconsin Avenue, NW
Washington, DC 20015
Phone: 202-237-5607
Fax: 202-237-6131

/s/ Stephen R. Neuwirth

Stephen R. Neuwirth
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Phone: 212-849-7165
Fax: 212-849-7100

Co-Lead Counsel for Direct Purchaser Class Plaintiffs

/s/ Marvin A. Miller

Marvin A. Miller
MILLER LAW LLC
115 South LaSalle St., Suite 2910
Chicago, Illinois 60603
Phone: (312) 332-3400
Fax: (312) 676-2676
Indirect Purchaser Plaintiffs Interim Lead Counsel

s/Michael F. Wood

MICHAEL F. WOOD
[DC-376312]

s/Timothy A. Westrick

TIMOTHY A. WESTRICK
[OH-0068153]

Attorneys
Antitrust Division
U.S. Department of Justice
Carl B. Stokes United States Court House
801 West Superior Avenue, 14th Floor
Cleveland, Ohio 44113-1857
Telephone: (216) 687-8410
Fax: (216) 687-8423
Email: michael.wood@usdoj.gov

/s/ James H. Walsh

James H. Walsh
Anne M. Whittemore
Howard Feller
Bethany G. Lukitsch
MCGUIREWOODS LLP
One James Center
901 E. Cary St.
Richmond, VA 23219
(804) 775-1000
Fax: (804) 775-1061
jwalsh@mcguirewoods.com
awhittemore@mcguirewoods.com
hfeller@mcguirewoods.com
blukitsch@mcguirewoods.com

Counsel for Carpenter Co.

/s/ Kendall Millard

Kendall Millard
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, IN 46204-3535
(317) 231-7461
Fax: (317) 231-7433
kmillard@btlaw.com

Michael D. Mustard
HUNT SUEDEHOFF KALAMAROS LLP
803 S. Calhoun, 9th Floor
P. O. Box 11489
Fort Wayne, IN 46858-1489
(260) 423-1311
Fax: (260) 399-2595
mmustard@hsk-law.com

Counsel for Flexible Foam Products, Inc.

/s/ Timothy J. Coleman

Timothy J. Coleman
Bruce McCulloch
Terry Calvani
John K. Warren
FRESHFIELDS BRUCKHAUS DERINGER US LLP
701 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20004-2692
(202) 777-4500
Fax: (202) 777-4555
tim.coleman@freshfields.com

*Counsel for Vitafoam, Inc. and
Vitafoam Products Canada Ltd.*

/s/ Francis P. Newell

Francis P. Newell
Peter M. Ryan
COZEN O'CONNOR
1900 Market Street
Philadelphia, PA 19103
(215) 665-2000
Fax: (215) 665-2013
fnewell@cozen.com
pryan@cozen.com

Counsel for Foamex Innovation, Inc.

/s/ Frank A. Hirsch, Jr

Frank A. Hirsch, Jr.
N.C. Bar No. 13904
Matthew P. McGuire
N.C. State Bar No. 20048
ALSTON & BIRD LLP
3201 Beechleaf Court, Suite 600
Raleigh, NC 27604-1500
(919) 862-2200
Fax: (919) 862-2260
frank.hirsch@alston.com
matt.mcguire@alston.com

Mark T. Calloway
Jennie C. Boswell
ALSTON & BIRD LLP
Bank of American Plaza, Suite 4000
101 South Tryon Street,
Charlotte, NC 28280
(704) 444-1000
Fax: (704) 444-1111
mark.calloway@alston.com
jennie.boswell@alston.com

*Counsel for Hickory Springs
Manufacturing Co.*

/s/ Edward G. Warin

Edward G. Warin
John P. Passarelli
KUTAK ROCK LLP
The Omaha Building
1650 Farnam Street
Omaha, NE 68102-2186
(402) 346-6000
Fax: (402) 346-1148
edward.warin@kutakrock.com
john.passarelli@kutakrock.com

Counsel for Future Foam, Inc.

/s/ Shepard Goldfein

Shepard Goldfein
SKADDEN, ARPS, SLATE MEAGHER
& FLOM LLP
Four Times Square
New York City, NY 10036
(212) 735-3610
Fax: (917) 777-3610
shepard.goldfein@Skadden.com

*Counsel for Domfoam International,
Inc. and Valle Foam Industries*

/s/ Daniel G. Swanson

Daniel G. Swanson
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7919
Fax: (213) 229-6919
dswanson@gibsondunn.com

Cynthia Richman
John W.F. Chesley
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
(202) 955-8500
Fax: (202) 530-9651
crichman@gibsondunn.com
jchesley@gibsondunn.com

*Counsel for Woodbridge Sales &
Engineering, Inc.*

/s/ Howard B. Iwrey

Howard B. Iwrey (P39635)
DYKEMA GOSSETT PLLC
39577 Woodward Avenue
Bloomfield Hills, MI 48304
(248) 203-0526
Fax: (313) 568-6893
hiwrey@dykema.com

*Counsel for Crest Foam Industries
Incorporated and Inoac USA Inc.*

/s/ Daniel R. Warncke

Daniel R. Warncke
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
(513) 381-2838
Fax: (513) 381.0205
warncke@taftlaw.com

Joseph M. Rebein
Laurie A. Novion
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108-2613
(816) 474-6550
Fax: (816) 421-5547
jrebein@shb.com
lnovion@shb.com

*Counsel for Leggett & Platt,
Incorporated*

/s/ Randall L. Allen
Randall L. Allen
Teresa T. Bonder
Erica L. Fenby
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
(404) 881-7000
Fax: (404) 881-7777
randall.allen@alston.com

Counsel for Mohawk Industries, Inc.

SO ORDERED

DATED: 2/24/11

s/ Jack Zouhary

Honorable Jack Zouhary
UNITED STATES DISTRICT JUDGE